

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 410 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

YOGESHKUMAR INDRAVADANBHAI

Appearance:

Shri K.G. Sheth, ADDITIONAL PUBLIC PROSECUTOR
for the appellant.

MR BM GUPTA for Respondent No.3
Respondents nos.1 & 2 expired.

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 30/11/1999

ORAL JUDGEMENT : (Per M.H. Kadri, J.)

The State of Gujarat by filing this Appeal under sec.378 of the Code of Criminal Procedure ("the Code" for brevity) has questioned the judgement and order dated January 18, 1992, passed by the learned Sessions Judge,

Sabarkantha, at Himatnagar in Sessions Case No.100 of 1990, by which the respondents came to be acquitted for the offences punishable under sec.498A, 302, 201 of the Indian Penal Code ("IPC" for brevity).

2. The Appeal was admitted by the Court (Coram : B.C. Patel & K.R. Vyas, JJ.) on July 31, 1992. When the appeal was placed for final hearing and taken up for actual final hearing, the learned advocate for the respondents submitted affidavit of respondent no.3, Jayshreeben Indravadanbhai Desai informing that respondent no.1, Yogeshkumar Indravadan Desai has expired on October 14, 1994 and respondents nos.2, Anandiben Indravadan Desai has expired on May 7, 1998. The death certificates of respondents nos.1, Yogeshkumar Indravadan Desai and respondent no.2, Anandiben Indravadan Desai are annexed to the affidavit. As respondents nos.1 and 2, Yogeshkumar and Anandiben respectively have expired during pendency of this appeal, the appeal is abated as per the provisions of sec.394 of the Code. This appeal is thus abated with regard to respondents nos.1 and 2.

3. As per the prosecution case which was unfolded at the trial, the marriage between respondent no.1 and the deceased Anjalinaben had taken place at Abu Road on November 7, 1989. Respondent no.1 was at the relevant time serving with Border Security Force (BSF) and was posted at Gurgaon, Haryana. It was alleged by the prosecution that the deceased, Anjalina was ill treated by respondents nos.2 and 3 as she was staying with them at Khedbrahma. On September 4, 1990, all the accused persons had aided and abetted each other and shared the common intention to cause death of Anjalinaben, as a result of which Anjalina was killed by throttling. Inquest Panchnama was held of the dead body of Anjalina and for performing autopsy of the dead body it was sent to the Government Hospital, wherein Dr.B.B. Parikh performed autopsy. Complaint was lodged by Wilson Joswa Samuel, the father of Anjalina against the respondents. The offence was registered at Khedbrahma Police Station against the respondents, The Investigating Officer, after completing the investigation submitted charge sheet in the Court of the learned Chief Judicial Magistrate. As the offence under sec.302 of the Code is exclusively triable by the Court of Sessions, the Chief Judicial Magistrate committed the case to the Court of Sessions, District Sabarkantha at Himatnagar, which was numbered as Sessions Case No.100 of 1990. Charge, exhibit 2 was framed against the respondents for offences punishable under secs.498A, 302 read with secs.34 and 201 of the

IPC. The charge was read over and explained to the respondents wherein they pleaded not guilty. The prosecution in order to prove its case against the respondents examined the following witnesses :

Sl. Name of witness PW No. Exh.No.
no.

1. Wilson Joswa Semuel 01 09
2. Ameliyaben Herisemuel 02 21
3. Dahyabhai Bhalabhai Parikh 03 27
4. Jethabhai Punjabhai Prajapati 04 33
5. Lataben Manilal 05 35
6. Jayantibhai Rupabhai Panchal 06 36
7. Natwarlal Chhaganlal Joshi 07 38
8. Khemabbai Galbabhai Rathod 08 39
9. Yakubkhan Shabankham Patha 09 42
10. Hanifbhai Gafurbhai 10 44
11. Gulambhai Abdulbhai Mansuri 11 46
12. Madhaji Punjabhai Thakarda 12 48
13. Dr.Bhagubhai Trikamdas Patel 13 50
14. Jemssayman Hedsemuel 14 52
15. Anitaben Wilson Jeswa 15 53
16. Jagdishbhai Jethalal Patel 16 64
17. Dilipbhai Kantilal Dave 17 89
18. Balvantraai Ambalal Pandya 18 91
19. Rajdhar Dolatrao Marathe 19 93
20. Dr.Uday Ramchandran Prandare, D.W.1, 103

4. The prosecution produced complaint lodged by the complainant, Postmortem Report, Inquest Panchnama, Panchnama of scene of offence, etc. to prove its case against the respondents. After the prosecution evidence was over, respondents were questioned generally and their statements came to be recorded under sec.313 of the Code. The respondents in their further statement claimed that they were innocent and deceased Anjalina had committed suicide. It is contended by the respondents that they were not present when Anjalina committed suicide and they were falsely involved in this case. The respondents in support of their case of suicide by Anjalina had examined Dr.Uday Ramchandra Purandare, at exh.103.

5. The learned Sessions Judge on appreciation of oral as well as documentary evidence concluded that the evidence of Dr.Purandare indicated that there was possibility of Anjalina having committed suicide. The

learned Sessions Judge concluded that when the incident took place, respondent no.1 was not present at the scene of offence. It was further concluded by the learned Sessions Judge that the explanation of respondent no.2, Anandiben was plausible and she was entitled to benefit of doubt as she had gone to another village for service and at the time of occurrence of the incident, she was not present. The learned Sessions Judge concluded that the case of the prosecution against respondent no.3, Jayshreeben was not sound and therefore, she was entitled to benefit of doubt. On the basis of the above referred to conclusions the learned Sessions Judge by his judgement and order dated January 18, 1992 acquitted all the respondents, which gave rise to filing of the present Appeal by the appellant.

6. As stated earlier the appeal so far as respondents nos.1 and 2 has abated as they have expired during pendency of the Appeal. The appeal is prosecuted only so far as respondent no.3 is concerned. Learned Additional Public Prosecutor, Shri K.G. Sheth has vehemently submitted that in letter exh.10 which was written by deceased, Anjalina, it was specifically mentioned that if any untoward incident happens with her, her mother in law and sister in law (respondent no.3) shall be responsible. It is submitted by the learned APP for the appellant that the deceased, Anjalina was staying with respondents nos.2 and 3 at Khedbrahma as respondent no.1 was serving with BSF in Haryana. Learned APP for the appellant has submitted that there was enough evidence against respondent no.3 to hold that she had treated deceased, Anjalina with cruelty and that she had shared common intention to commit murder of Anjalina.

7. Learned APP for the appellant has taken us through the entire evidence produced on record of this case. The submission of the learned APP for the appellant that the letter, exh.10 which was written by deceased, Anjalina on May 23, 1990 proves beyond doubt that Anjalina was treated with cruelty by respondents nos.2 and 3. It is further submitted by the learned APP for the appellant that in the letter, exh.10, it was stated by deceased, Anjalina that if any untoward incident happens with her, her mother in law and sister in law shall be responsible. The letter, exh.10 bears the date of May 23, 1990 and it was left by deceased, Anjalina at her father's place. Surprisingly, this letter was not traced by the parents of Anjalina or her sister, Ameliya till the date of the incident, i.e. September 4, 1990. The learned Sessions Judge had discarded this piece of evidence as it has raised doubts

about the authenticity of the letter. Learned APP, Shri K.G. Sheth has taken us through the oral evidence of the witnesses, who are examined by the prosecution. But we do not find that respondent no.3 had shared common intention with respondents nos.1 and 2 to commit murder of Anjalina. There is no iota of evidence that respondent no.3 had caused mental as well as physical cruelty on the deceased, Anjalina. In view of lack of evidence against respondent no.3, we are of the opinion that the appeal is meritless and it deserves to be dismissed.

8. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned Judge, who had opportunity to observe demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi and others v. Bijendra Narain Chaudhary, AIR 1967 SC 1124; and (2) State of Karnataka v. Hema Reddy and another, AIR 1981 SC 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent. The learned APP has failed to convince us to take the view contrary to the one already taken by the learned Judge and therefore, the appeal is liable to be rejected.

9. For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and is dismissed. Muddamal articles to be disposed of in terms of the directions given by the learned Judge in the impugned judgement.

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